

STRATEGY ONE: SELECTING RIGHT TOOLS FOR ACQUIRING WATER RIGHTS

Washington has several potential tools for water acquisition. Some, such as water right leasing and purchasing, have already been used on a limited basis. Other more innovative measures such as water banking, auctions, source water substitution and dry-year leases are currently being tested and employed.

Determining which acquisition tool is best depends on a wide array of factors, including the extent and duration of instream-flow problems, acceptance by water-right holders and communities of instream flow needs and available funding. The mechanisms that appear most promising are:

- Strategically-placed purchases
- Long term, split-year and dry-year leases
- Reverse water auctions
- Water banking

I. Promising acquisition tools

1. Purchases

Purchasing all or a portion of a water right means that right is permanently transferred into the state's trust program. A purchase offers permanent solution to instream flow needs. This is the most expensive means of acquiring water rights. The per-acre-foot value of a water right comes at a higher cost and may also include appraisal and escrow fees. It is, however, the best and most reliable tool of putting water back into streams with chronic flow problems. Due to limited funding, however, the Washington Water Acquisition Program is unlikely to make many purchases. Any water right considered for purchase needs to be located in high priority area and have a sufficient enough seniority or priority date so the water can be protected from withdrawals by other water users.

2. Leases

Leasing offers the opportunity for water-right holders and local communities to become comfortable with instream flow restoration efforts. For example, **annual leases** can be targeted to solve short-term flow problems, such as extreme low-flow conditions during drought. Annual and seasonal leases were used in Washington during the 2001 drought. While short-term leases may be appropriate in certain situations, the best leasing solution is entering into long-term multi-year agreements.

A **split-season lease** allows a portion of a water right to be used for irrigation early in the season, leaving the remaining portion of the right for instream use later in the summer or fall. Split-season leases allow farming to continue while supporting salmon. A trigger event such as stream flow levels must be identified for determining when to exercise the split-season lease. These leases are likely less expensive than full-season leases. To minimize administrative costs, one contract can be drawn to cover several years and might cover a single water-right holder or

multiple leases from several water rights holders within an irrigation district, as was done in the Elwha-Dungeness basin.

Another type, the **dry-year lease**, provides an occasional rather than a permanent water transfer. While dry-year leases are long-term in duration and provide some predictability, very few have actually been negotiated. Even so, at least three types of dry-year leases have been contemplated – insurance, option and predictive.

Under an **“insurance”** dry-year lease, a water-right holder or lessor is paid a yearly amount as insurance against the possibility that a dry year will occur. In a dry year, lessors agree not to use the water and receive a yearly insurance payment whether there is a dry year or not. Some versions use one-time rather than yearly payments against the occurrence of a dry year. A trigger event such as stream flow levels, precipitation, snowpack, runoff or storage must be identified to provide an objective basis for determining when the lease is exercised.

Under the **“option”** dry-year lease, the contract agreement provides an option where a lessee has first call of the water in a dry year and the water-right holder receives a payment, regardless of whether there is a dry year or not. An option payment is made either at the initiation of the contract or annually to ensure that a valid contract exists. An additional payment is made, however, when the lessee exercises the dry-year option, usually at a predetermined price. With an option lease, the trigger is less important because the lease will be paid only when use of the water by the lessee is necessary.

Another version, the **“predictive” dry-year lease**, was developed by the Oregon Water Trust for a dry-land irrigator to run over a 10-year period. The trust and farmer determined that on average irrigation was needed three out of 10 years. A contract between the trust and the irrigator included an up-front payment for forgoing irrigation when it would have been needed (three out of the 10 years) and water was donated for the other seven years. As a result, the contract essentially required the irrigator not to irrigate for 10 years.

3. Water auctions

Auctions provide an opportunity for a seller to offer water rights to numerous buyers. The Deschutes Resources Conservancy, a non-profit organization in Oregon, is currently developing guidance for a new program for leasing water rights using a “reverse auction” (*see boxed text*). The conservancy hopes to run a reverse auction in January 2003 and is now consulting with area irrigation districts to explore how best to undertake this tool.

Mechanisms for a “reverse” water auction

- Water bank is established in an area.
- Tributaries/reaches needing water are identified.
- Budget is set for the water auction.
- Request for proposals, public information and press releases are advertised and distributed.
- Submittals are reviewed for validity, seniority, stream location and asking price.
- Leases are awarded based on the priority of the lease and available funds.
- Remaining proposals can be listed on the exchange board if proponents desire.

4. Water banking

Water banking can be defined as any activity where water is held by an institution and withdrawn at another time. Banked water can be held in storage, in a reservoir system or an underground aquifer. It can even be held on paper for future withdrawal or exchange.

A survey of the other 18 states west of the Mississippi River revealed that nine states have state-operated water-banking activities in various stages of development. The states are: California, Arizona, Idaho, Texas, Nevada, Kansas, New Mexico, Colorado and Oregon. The details of water banking vary greatly from state to state. Most banks operate regionally within each state, usually at a watershed or basin level. Some states bank groundwater and some bank surface water from reservoirs and some use “paper” credits for unused surface water. Some states also purchase water to put in the bank and accept proposals for water to be held and offered for sale to prospective buyers.

To design a water bank program, the following questions need to be addressed:

- What should a bank accomplish? Should it be limited to increasing instream flows or should it also function as an exchange program for willing buyers and sellers?
- Should a bank operate statewide, or at a regional or watershed level?
- Should a bank be run solely by Ecology, private local entities, or as a public-private partnership?
- Should a bank be limited to operating in areas where there is reservoir storage, or should a bank use paper credits reflecting the individual contributions of water users?
- What mechanisms should the bank use (e.g., purchase credits, soliciting proposals, reverse auction, reservoir release etc.)?
- How should a water bank be piloted to determine if it will meet state needs?

A water bank program to restore instream flows in Washington can be done using the existing state trust water right program. However, new legislation would be required to establish mitigation water banks, multi-state water banks or create private local banks to hold trust water.

Ecology, Washington Water Trust, U.S. Bureau of Reclamation, Colville Confederated Tribes, Bonneville Power Administration and other local entities are currently exploring how to set-up water banks in the Yakima and Okanogan river basins. A proposal to design and develop a working water bank in the Yakima River basin has been approved by BPA under BPA/NMFS Water Transactions Program. It will be funded by both Ecology and BPA. The proposal will support efforts to increase instream flows in the basin and will be built on the existing organizational structure for expediting transfers of water rights to instream flows.

II. Other acquisition tools

1. Source of water substitution

This type of acquisition involves changing the point of a surface water diversion or substituting one source of water for another, usually from surface to ground water. Changing the point of diversion to a location below a critical stream reach might increase flows in that reach. Where ground and surface waters are hydrologically connected, changing the point of diversion from surface water to wells can result in more water remaining in the stream. This option is being

implemented by the Methow Valley Irrigation District. A diversion source may also be changed from an existing surface diversion on a small tributary to a larger mainstem river or stream.

2. Gifts or donations

Water-right holders can choose to donate all or part of their water rights to the trust water program, on either a temporary or permanent basis, to help increase stream flows. Any portion of a donated water right is managed by Ecology. The person or entity donating their water right may qualify for a federal income tax deduction.

3. Net water saving

This type of transaction involves the acquisition by the state of the amount of water that is determined to be conserved and usable within a specified stream reach or reaches without impairment or detriment to water rights existing at the time that a water conservation project is undertaken. This type of acquisition must be the result of physical or operational improvements financed in whole or in part by the state and/or federal agencies. The net water saving conveyed to the state water right trust is proportional to the amount of public money provided.